

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

MCI TELECOMMUNICATIONS CORPORATION )

Docket No. 96-149

Petition For Declaratory Ruling )

Regarding the Joint Marketing )

Restriction in Section 271(e)(1) of the )

Communications Act of 1934, as amended )

by the Telecommunications Act of 1996 )

**REPLY COMMENTS OF SBC COMMUNICATIONS INC.**

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**REPLY COMMENTS OF SBC COMMUNICATIONS INC.**

SBC Communications Inc. ("SBC") by its attorneys hereby submits its reply comments on behalf of its affiliates and subsidiaries, including Pacific Bell and the other Pacific Telesis Group Companies. Only one commenter, AT&T Corp. ("AT&T"), supports MCI Communications Corporation's ("MCI's") Petition for Declaratory Ruling ("Petition"). That support is in the form of disingenuous statements about the marketing materials used by MCI and AT&T -- statements that ignore the language and implications of those materials and, more importantly, that ignore the requirements and restrictions of §271(e)(1) of the Act<sup>1</sup> and the Commission's ruling in the First Report and Order in this Docket.<sup>2</sup> The Commission should reject MCI's and AT&T's requests for a ruling that would effectively write

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<sup>1</sup> Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("the Act").

<sup>2</sup> Implementation of Non-Accounting Safeguards of Section 271 and 272 of the Telecommunications Act of 1934, as amended, CC Dkt. No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 5 Comm. Reg. (P&F) 696 (1996) ("Order").

§271(e)(1) out of the Act, and instead should rule that the marketing materials used by MCI and ATT violate §271(e)(1) and the Order.

I. AT&T MISCHARACTERIZES THE LAW AND THE ORDER

Just as MCI did in the Petition, AT&T supports its position by characterizing the intent of the Telecommunications Act of 1996 ("1996 Act") solely as fostering competition in local markets.<sup>3</sup> However, while that was certainly one purpose of the 1996 Act, it was not the only purpose. As the Commission recognized in the Order

[t]he intent of the 1996 Act is 'to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition.'<sup>4</sup>

Put another way, "the fundamental objective of the 1996 Act is to bring to consumers of telecommunications services in all markets the full benefits of vigorous competition."<sup>5</sup> Congress recognized the need to balance the entry of interexchange carriers ("IXCs") and BOCs into new markets "to ensure that neither the BOCs nor the existing [IXCs] could enjoy an advantage from being the first to enter the other's market."<sup>6</sup> This balance was created by limiting the BOCs' ability to jointly market their local service with the long distance service of their affiliates until the affiliates had received authorization under §271 to provide such service and by limiting the ability of the large IXCs to jointly market their long distance

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<sup>3</sup> AT&T Comments, p. 4.

<sup>4</sup> Order, ¶1 (quoting from Joint statement of Managers, S. Rep. No. 104-230 at 1 (1996)). (emphasis added)

<sup>5</sup> Id., ¶7.

<sup>6</sup> Id., ¶8.

service with resold local service obtained from the BOCs until the BOCs received 271 authorization.<sup>7</sup>

AT&T focuses on just one part of Congress' intent and asserts that compliance with the requirements imposed by §271(e)(1) and the Order will "have a chilling effect on [IXC] marketing of local service offerings", and will "thwart the intent of the Act to foster competition in local markets by severely hampering IXCs' efforts to enter such markets."<sup>8</sup> In fact, complying with the requirements and restrictions of the Act and the Order will not thwart Congress' intent -- it will support and advance that intent by preventing the large IXCs from obtaining an overwhelming competitive advantage by offering "one-stop shopping" before the BOCs are permitted to compete. As Time Warner stated, "[t]he 1996 Act recognizes the potential for competitive harm that can result from allowing certain carriers to offer a full range of services before others."<sup>9</sup>

Nor will compliance with the law and the Order have a "chilling effect" on large IXCs' ability to compete. The restrictions imposed are narrow -- too narrow in the view of many -- in both scope and duration. The large IXCs are prohibited from jointly marketing with their long distance service only one type of local service -- that which they provide through resale of BOC local service. And even that local service can, under the Order, be advertised in the same marketing materials as the long distance service, so long as the large IXCs do not state or imply in those marketing materials that they can engage in certain prohibited

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<sup>7</sup> §272(g)(2) and 271(e)(1); Comments of Time Warner Communications Holdings, Inc. ("Time Warner"), pp. 3-5.

<sup>8</sup> AT&T Comments, p. 4.

<sup>9</sup> Time Warner Comments, p. 5; see also BellSouth comments, p. 7.

activities. In addition, the time period in which those restrictions apply is limited. Once a BOC receives authorization to provide long distance service in a state, the large IXC's are freed of the joint marketing restrictions. Compliance with Congress' design for implementation of competition across the telecommunications industry is not too great a burden for the large IXC's to bear.<sup>10</sup>

AT&T also mischaracterizes the meaning of "joint customer care" in the Order, just as MCI did in the Petition. Joint customer care does not encompass any and every customer-related activity engaged in by a large IXC once it has sold service (either a single service or both long distance and local service) to a customer. Such a broad interpretation of that term would write §271(e)(1) out of the 1996 Act, and that is not what the Commission did. The Commission defined joint customer care as "a single bill for both BOC resold local services and interLATA services, and a single point-of-contact for maintenance and repairs," and characterized these as "post-marketing" activities.<sup>11</sup> Such activities do not, and cannot, include the broad panoply of activities described by MCI and AT&T in their marketing materials. Furthermore, the Order says that the large IXC's can provide "joint customer care", not that they can advertise it. Even if they are permitted to advertise those two activities, they are permitted to advertise only those authorized activities. Instead, they are advertising prohibited activities.

Offering a customer a single telephone number to answer all of the customer's questions about all of the IXC's services is neither a single bill nor a

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<sup>10</sup> See Time Warner Comments, pp. 6-7; Ameritech Comments, pp. 6-7.

<sup>11</sup> Order, ¶281.

single point-of-contact for maintenance and repair, nor is it "post-marketing" activity. Rather, it is marketing of one-stop shopping for all of the IXC's services, a prohibited activity. The Commission's statement in the Order that "once a customer subscribes to both local exchange and interLATA services from a carrier that is subject to the restrictions of 271(e), that carrier may market new services to an existing subscriber"<sup>12</sup> cannot be read to allow the large IXCs to jointly market long distance and resold local service. Such a reading directly contradicts §271(e)(1), which does not limit the joint marketing restrictions with respect to which customers or potential customers the large IXCs target with their marketing activities.<sup>13</sup> The Order must be interpreted to be consistent with the statute. The large IXCs must be prohibited from engaging in the very joint marketing that the Act sought to prevent.

II. AT&T'S VIEW OF THE MARKETING MATERIALS IS TOO NARROW AND IGNORES THE LANGUAGE AND IMPLICATIONS OF THOSE MATERIALS

AT&T attempts to justify the marketing materials used by MCI and itself by discussing only a single facet of each of the items, instead of looking at the entire item and its total impact on a customer.<sup>14</sup> The materials discussed by AT&T are not as innocuous as AT&T would have the Commission believe. Each either explicitly or implicitly violates the prohibition on marketing themselves as a single point-of-contact, one-stop shop for long distance and resold local service.

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<sup>12</sup> Id.

<sup>13</sup> Ameritech Comments, pp. 9-10; Bell Atlantic and NYNEX Comments, p. 3.

<sup>14</sup> These comments will discuss only the items mentioned in AT&T's comments. Other items, some even more egregious, were discussed in our Opposition to the Petition.

On pages 7 and 8 of its Comments, AT&T discusses one of its advertisements and one of MCI's advertisements and says that these items are not attempting to sell long distance service, just local service, so are not impermissible joint marketing. AT&T goes on to say that even if they were joint marketing, they are permissible because neither implies that the IXC provides bundled packages of service or one-stop shopping through a single transaction. That statement is simply not true. AT&T's advertisement talks about its local service and its long distance service and provides a single telephone number -- 1-800-ATT-4ALL.<sup>15</sup> There can hardly be a clearer implication that a customer need only call that single number "for all" of AT&T's services. The MCI material suffers from the same problems -- after referencing both local and long distance service, MCI tells the customer to "enjoy one call to one company" and provides a single telephone number.<sup>16</sup>

On page 10 of its comments, AT&T discusses a transcript of a radio interview given by an AT&T spokesperson.<sup>17</sup> AT&T says that the offending statement about one-stop shopping does not violate the Order because it was made by the reporter, not the AT&T spokesperson. However, the spokesperson had ample opportunity but did not correct the reporter's statement, instead stating that whatever service a customer wants, they can deal with just one company to get it. Again, this leaves potential customers with the idea that they need only call AT&T for one-stop shopping.

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<sup>15</sup> AT&T Comments, Exhibit B, item 1.

<sup>16</sup> Petition, Exhibit A.

<sup>17</sup> AT&T comments, Exhibit B, item 3.

Finally, on pages 10-12 of its Comments, AT&T describes materials that it and MCI use as permissible under the Order because the materials describe joint customer care. However, those items do not just describe "joint customer care" as defined in the Order. AT&T's "questions and answers"<sup>18</sup> piece states in the first answer that the 800 number provided is "the only number you need for information about your local service - or any AT&T service - for answers about calling across the street or around the globe . . . you can call this number for answers about your local service and to find out how AT&T can handle all of your calling needs." Those statements have nothing to do with a single bill or with maintenance and repair service. They provide the customer with one place to call -- one-stop shopping -- for all AT&T services. AT&T defends the MCI mailings as being advertisements for joint customer care. But, in fact, they go well beyond authorized joint customer care. One offers "One company . . . one bill . . . one call" and provides one telephone number to call with questions, not limited to questions about repair and maintenance.<sup>19</sup> Another offers "One company. One call. One bill." and tells the customer that when they subscribe to MCI local and long distance they have "one company to consult for all your communications" and "one call for all your customer service needs."<sup>20</sup> Again, this goes beyond authorized "joint customer care". Customers will undoubtedly believe they need to place just one call to MCI for all of their telecommunications needs.<sup>21</sup>

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<sup>18</sup> AT&T Comments, Exhibit B, item 4, p. 1.

<sup>19</sup> Petition, Exhibit B.

<sup>20</sup> Petition, Exhibit C, p. 1.

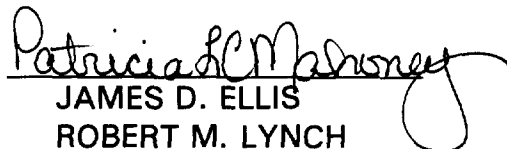
<sup>21</sup> Ameritech Comments, pp. 8-9; BellSouth Comments, pp. 5-6.



III. CONCLUSION

It is obvious from the Petition and AT&T's comments that the large IXCs have no intention of complying with the spirit or the letter of §271(e)(1). The Commission should make clear to these IXCs that it meant what it said in the Order. The Commission should rule that the MCI and AT&T marketing materials violate both §271(e)(1) and the Order.

Respectfully submitted,

  
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June 24, 1997

## CERTIFICATE OF SERVICE

I, Janice Ono, hereby certify that on this 24th day of June, 1997 copies of the foregoing **"REPLY COMMENTS OF SBC COMMUNICATIONS INC."** regarding MCI's Petition for Declaratory Ruling, CC Docket No. 96-149 were served by hand or by first-class United States Mail, postage prepaid, upon the parties appearing on the attached service list.

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